

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY LEE,

Plaintiff,

vs.

DANA CORPORATION,

Defendant.

DOCKET NO.

2:20-cv-11282-DPH-DRG

Hon. Denise Page Hood

CARLA D. AIKENS, P.C.

Carla D. Aikens (P69530)
Ashley J. Burrell (P79614)
615 Griswold St., Suite 709
Detroit, MI 48226
(844) 835-2993-[telephone](tel:8448352993)
carla@aikenslawfirm.com

Counsel for Plaintiff

FOLEY & LARDNER LLP

Jeffrey S. Kopp (P59485)
Felicia O'Connor (P76801)
500 Woodward Avenue, Suite 2700
Detroit, Michigan 48226
(313) 234-7100
(313) 234-2800 (Facsimile)

Counsel for Dana Incorporated

STIPULATED ORDER TO SET ASIDE ENTRY OF DEFAULT

NOW COME the parties, by and through their respective counsel of record, and hereby stipulate and agree to entry of an Order vacating and setting aside the Clerk's Entry of Default dated August 31, 2020.

In support of this stipulation, the parties state as follows:

1. Plaintiff Anthony Lee filed the Complaint in this matter on May 21, 2020 (“First Complaint”). [Doc. 1].
2. In the First Complaint, Plaintiff named Dana Corporation as the Defendant.
3. On May 25, 2020, Plaintiff filed an Amended Complaint [Doc. 2], again naming Dana Corporation as the Defendant.
4. Plaintiff attempted to serve Dana Corporation through its resident agent, the Corporation Company, on June 17, 2020.
5. However, Dana Corporation contends that it is not an existing entity, having ceased operations in 2008 as the result of a merger.
6. Plaintiff contends that Dana Incorporated and Dana Corporation are the same entity.
7. Dana Incorporated contends that on June 18, 2020, the Corporation Company sent a letter to Plaintiff’s Counsel explaining that it could not accept service on behalf of Dana Corporation because Dana Corporation withdrew to do business in the State of Michigan on April 16, 2008. Plaintiff asserts that he never received this letter and did not have notice that the Corporation Company would not accept service on behalf of Dana Corporation.

8. According to the letter from the Corporation Company, Dana Corporation was never served with the First Complaint or Amended Complaint in this matter.
9. On August 28, 2020, Plaintiff filed a Request for Entry of Default. [Doc. 4].
10. On August 31, 2020, the Court entered a Clerks Entry of Default against Dana Incorporated (rather than Dana Corporation), an entity that was never named in this case, and was never served with either the First Complaint or Amended Complaint.
11. In order to resolve these issues, the Parties now agree and stipulate that the Clerk's Entry of Default should be set aside, and that Counsel for Defendant Dana Incorporated will accept service of the Amended Complaint on behalf of Dana Incorporated as of the date entry of this Order.
12. The Parties further agree that once the Entry of Default is set aside, that Dana Incorporated is the Defendant in this case and the caption may be changed to reflect that Dana Incorporated rather than Dana Corporation is the Defendant.
13. The parties further agree that for purposes of any statute of limitations argument, Dana Incorporated will use the date that this case was filed as the date that the lawsuit was initiated against it.
14. Finally, the Parties agree that Dana Incorporated shall have 28 days after the entry of this Order to file its Answer to the Amended Complaint.

Now, therefore:

IT IS HEREBY ORDERED that the Clerk's Entry of Default dated August 31, 2020, is vacated and set aside.

IT IS FURTHER ORDERED that the case caption will change to reflect that Dana Incorporated is the Defendant in this case.

IT IS FURTHER ORDERED that Defendant Dana Incorporated shall have 28 days from the entry of this Order to file an answer to the Amended Complaint in this matter.

IT IS SO ORDERED.

Dated: November 30, 2020

s/Denise Page Hood
United States District Judge

APPROVED AS TO SUBSTANCE AND FORM:

/s/ Ashley J. Burress
CARLA D. AIKENS, P.C.

/s/ Felicia O'Connor (with permission)
FOLEY & LARDNER LLP

Carla Aikens (P69530)
Ashley J. Burress
(P79614)
615 Griswold St., Suite 709
Detroit, MI 48226
P: (844)835-2993
carla@aikenslawfirm.com
ashley@aikenslawfirm.com
Counsel for Plaintiff

Jeffrey S. Kopp (P59485)
Felicia O'Connor (P76801)
500 Woodward Avenue,
Suite 2700
Detroit, Michigan 48226
(313) 234-7100
(313) 234-2800 (Facsimile)
jkopp@foley.com
foconnor@foley.com
*Attorneys for Dana
Incorporated*

Dated: November 30, 2020